



Legal Considerations

There are several legal considerations of particular importance to MPs engaged in traffic operations. This chapter provides certain rules, but is certainly not all inclusive. Further information and guidance on particular situations can be found in FM 27-1, Legal Guide for Commanders; DA Pam 27-22, Evidence; TC 19-22, Apprehension, Search and Seizure; Manual for Courts-Martial; and from the local staff judge advocate.

Auto Inventory

When an individual is arrested for driving under the influence (DUI), or is subject to arrest involving transportation to the provost marshal's office, the individual's vehicle will be secured. If there is a location available to secure the vehicle at the place of apprehension, this may be done. However, if

there is no place to secure the vehicle, it will be impounded at a location under the control of the provost marshal and inventoried.

If a person is arrested for DUI as he pulls into his quarters' parking lot, there is no reason to impound the vehicle. However, if a person is arrested on an outlying range road; there is no place to secure the vehicle; and a possibility exists that items may be lost or stolen, the vehicle should then be impounded and inventoried.

Search Incident To Apprehension

At the time of apprehension or immediately thereafter, the apprehending official should notify

the individual that he is being apprehended for a specific offense. The MP may then search the person and the immediate area. The search is made to detect weapons, destructible evidence, or means to effect an escape.

A search incident to an apprehension is a search of an arrested person and the area subject to the suspect's immediate control at the time of apprehension. Such a search is lawful only when there is probable cause for apprehension. The geographical limitation restricts the apprehending MP to searching the immediate area. This will include any area from which an individual may grab a weapon or destructible evidence with a sudden lunge, leap or dive from where he is situated.

Note: In the automobile type situation, the MP may search the individual and the area surrounding where the suspect was seated at the time the vehicle was stopped. This includes the driver's seat and the area under the driver's seat.

Not all arrests justify a search incident to apprehension. Generally, **you may not make a search** when the offense results solely in the issuance of a traffic citation. However, if the person who has been issued the traffic citation is normally required to appear before the desk sergeant for booking or release to the commanding officer, then a search of the individual and the immediate area may be made.

Normally you may not make a full search of a traffic offender. But if he acts in such a way to lead you to believe that he may be armed and there is a threat to your safety, you may then frisk the individual. Also if something happens that gives you probable cause to believe he is concealing evidence of a crime, then you may conduct a search of the suspect and his car. For example, when an individual is stopped for speeding he may make a motion to place something under the front seat, or to grab something under the front seat. In this type of situation, it is permissible to frisk the individual and examine the immediate area.

Plain view. If, while issuing a traffic citation or making an apprehension, you observe items in

plain view that would aid in a criminal prosecution, you may seize these items even though they are not on the person or in the immediate area. This is true even if the item(s) is not related in any way to the crime which you are investigating. Seizing an item in plain view in proximity to an individual may offer the basis to justify an apprehension or a further search of the same area or another area.

Plain smell. The rationale applied for plain view also applies for plain smell.

Note: While on patrol an MP may observe an item in a parked car, or while making a routine spot check of a vehicle he may notice something that will aid in a criminal prosecution. The MP may seize such items.

Hot Pursuit

An MP patrol pursuing a person they have probable cause to believe is armed and has just committed a serious crime, may enter a vehicle or building believed to have been entered by the suspect, and search the building or vehicle for the person or for any weapons that might be used to further his escape. Once the individual pursued is apprehended, the search will be limited by the search incident to apprehension rules.

When the pursued person is not found on the premises, the officer may search the premises for evidence of the suspect's identity or whereabouts if the suspect is believed to be armed and dangerous, and if his identity or the location to which he is fleeing is unknown.

This rule applies when you receive a report of an armed robbery or rape and shortly thereafter you receive a description of the person who has committed the offense and notice that the person has just entered a barracks on post.

An MP patrol may enter a building (a barracks or house) and search wherever the suspect may be hiding. In addition, the patrol may search any areas where a weapon might be hidden, such as closets, under beds, under mattresses, in toilet bowls, etc.

Entry and Search To Protect Persons and Property

A patrol may make a warrantless entry into any premises whenever there is reason to believe it is necessary to prevent injury to persons or serious damage to property and/or to render aid to someone in danger.

If while on patrol in a housing or barracks area you hear sounds of a fight or cries for help coming from a building, you may enter the building to prevent injury or damage. Once the danger or emergency conditions are over, you may only take the steps necessary to carry out the purpose of the original entry.

Search for Identification

An MP may examine the personal effects of any person who appears to be incapacitated for one reason or another, to learn either the cause of the incapacitation or to identify the individual.

For example, if an MP night patrol observes a car in the parking lot of the PX snack shop after it has been closed, the car should be examined. If while examining the vehicle, someone is observed apparently unconscious, it is proper for the patrol to open the vehicle, learn if the individual is unconscious; notify the hospital, and obtain evidence of identification either from the individual or from the car.

Unsecured Or Stolen Vehicles

A patrol that finds an unsecured vehicle that is registered on post or has a visitor's pass and is

capable of being secured, will secure the vehicle. A locally fabricated card or form should be left reminding the owner to secure the vehicle. If a vehicle registered on the installation cannot be secured, the patrol will attempt to learn the identity of the owner by contacting the desk sergeant or vehicle registration section. If time does not permit this, the patrol should search the vehicle for identification. If a vehicle is not registered on post or does not have a visitor's pass, the patrol may search it for identification.

If, while searching the car the owner of the vehicle is identified, the MP making the search for identification will attempt to contact the owner and ask him to secure his vehicle in the future.

If, while looking for identification, evidence of a crime is found, the evidence may be seized under the plain view rule (as discussed previously) and may lead to appropriate action against the individual for criminal conduct.

If the owner of the vehicle cannot be determined by looking for identification, the vehicle should be secured temporarily, and an attempt made through all available means to determine the owner or whether the vehicle was stolen.

Note: When MPs are permitted to make a search for identification, the scope of the search is limited to those areas where identification of owners of vehicles are normally found, such as glove compartments, consoles, or what appears to be documents lying in open view in the car.

Automobile Searches

An MP may make a warrantless search of a car at the time and place of apprehension if there is probable cause to believe the vehicle contains seizable items. A warrantless search need not take place where apprehension of the occupant(s) took place if there is a reason for conducting the search at another place (such as the MP station).

If an individual is stopped for a traffic offense and the MP observes items in plain view (such as drugs or drug paraphernalia or evidence of another crime), this would give the MP probable cause to believe that other evidence is located in the vehicle. When this occurs, the vehicle can be searched there, or it can be moved to the MP station where a search of the entire vehicle may be made. If the owner of the vehicle is taken into custody and there is no likelihood of the vehicle being removed by a third party, a search warrant should be obtained.

Caution

If the search of the vehicle is not made within a reasonably short time—usually 20 minutes—authorization to search the vehicle should be obtained.

An MP who wishes to make a search that is not otherwise authorized, may do so if the person or persons in control of the immediate area or object to be searched, voluntarily give their consent. To insure the consent is voluntary, the MP should warn the individual: “I have no authorization to search, and you have a constitutional right to object to the search. I would like to search you (or a particular place) for...”

If the person consents to a search, it probably would be considered voluntary. Refusal to consent to a search, like evasive answers to a question, may cause suspicion, but is not sufficient grounds for probable cause to search.

Abandonment

An MP lawfully on patrol in any area may, without authorization to search, recover any abandoned property and examine its contents for seizable items. For instance, if you are on patrol and observe an unattended and unsecured vehicle in an isolated area during a period when no vehicles are authorized to park in that area, it is

proper to search the vehicle for any items that may be seized.

While on patrol, you may have occasion to arrest an individual for a traffic offense. If, before the vehicle comes to a halt you notice the occupant throw something from the vehicle, such as a small envelope, you may recover it and any objects inside may be seized.

Hearsay Rule

Hearsay is defined as **a statement made out of court, and offered in court as evidence to prove the truth of its contents.** Such a statement is usually not admissible in court. The rule against hearsay is designed to limit a witness' testimony to the facts he has obtained by firsthand knowledge. There are many exceptions to the hearsay rule, including the following:

★ **Dying Declarations**—used in trials for homicide. The declarant must have made the statement when he had no hope of recovery. In fact, the declarant must die for the statement to be admissible as a dying declaration. The statement may include the identity of the assailant and details of the offense.

★ **Spontaneous Exclamations**—utterances induced by the shock of witnessing or participating in a startling event, such as the commission of a crime. There must be no opportunity for deliberation between the event and the utterance. A statement made by a victim under the conditions outlined for a dying declaration but who does not die, may be admitted under the spontaneous exclamation exception to the hearsay rule.

★ **Fresh Complaints**—admissible solely to corroborate the testimony of the victim of a sexual offense. If the complaint also qualifies as a spontaneous exclamation, details of the offense, when included in the complaint, are

admissible to prove the truth of the matters stated.

✪ **Confession**— a complete acknowledgment of guilt such as, “I did not stop at the stop sign.”

✪ **Admission**— a self-incriminating statement not amounting to a complete acknowledgment of guilt such as, “I didn’t see the stop sign.”

